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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM—1945

No. 608

JAMES A. TAYLOR,

Petitioner,

against

NEW YORK CENTRAL RAILROAD COMPANY,

Respondent.

PETITIONER'S REPLY MEMORANDUM

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This case could not have been, and was not, decided by the State Courts, against the petitioner, without determining the basic federal question of whether the petitioner was protected by the Federal Employers' Liability Act. The Trial Court passed upon that question (R., p. 39). The Court of Appeals did so, and devoted to that question more than half of its over five-page opinion (294 N. Y. 397, 402-405).

Not only did the State Courts pass upon that federal question; it is obvious that they recognized the question had to be passed on and was basic to the case. In the face of the record and the opinions, a certification by the Court of Appeals that the question was presented and necessarily passed upon would be wholly superfluous; its absence is immaterial (*Williams* v. *Kaiser*, 323 U. S. 471, 477-478; *cf. Honeyman* v. *Hanan*, 300 U. S. 14).

It is immaterial how the case reached the New York Court of Appeals. Concurrently with its dismissal of the appeal taken as of right, that Court granted leave to appeal and thus took jurisdiction. Its acceptance of jurisdiction by that route rather than by appeal as of right, if viewed as a holding, in that preliminary review of the case, that the Court perceived no substantial question of constitutional construction, is of no significance, because: (a) the constitutional principle that where the Federal Employers' Liability Act applies the State Workmen's Compensation Law is excluded being well-settled and recognized by the State decisions, it is fair to conclude that the Court viewed the question of whether the Federal Act applied not an issue over "the construction of the constitution" (N. Y. Civil Practice Act, Sec. 588, Subd. 1) but solely one over the construction of the federal statute and as such not appealable without its leave where there was a unanimous affirmance by the intermediate appellate court; (b) what we are concerned with here is not the constitutional but *federal* nature of the issue; (c) the substantial nature of that and the Court of Appeals' recognition thereof are attested by the opinion which that Court rendered after the complete hearing of the appeal on the merits.

It is true that in the State Courts the petitioner contended also that even if, as a matter of paramount federal law, he was not protected by the Federal Employers' Liability Act, nevertheless, under a proper construction of the State Workmen's Compensation Law and its application to the facts of the case, he was not deprived of his cause of action against the Central. The presentation of that argument on the state law did not eliminate or prejudice the petitioner's contention that, as a matter of binding federal law, the state statute had no application whatsoever. On the contrary, the authoritative and final rejection by the State Courts of petitioner's plea for the liberal construction of the state statute, rendered *the federal question the controlling one.*

The State Courts did not decide that, by general law, irrespective of the applicability of the Federal Employers' Liability Act, petitioner was deprived of his cause of action. Their decision is that the Federal Employers' Liability Act did not apply and, hence, the State Workmen's Compensation Law gave Central a complete defense. That ruling on the federal question is the premise and basis of the decision.

Contrary to the impression that one may gain from a reading of the respondent's brief, petitioner did not base or rest his case on the State Workmen's Compensation Law. He brought an ordinary personal injury action. It was the defendant who invoked the State Workmen's Compensation Law as a defense (see pleadings, R., pp. 4-13; Petitioner's Brief, pp. 22-23). It was on that defense—and solely on that defense—that the respondent prevailed in the State Courts. If, as we contend, as a matter of paramount federal law, the Federal Employers' Liability Act applies to the exclusion of the State Workmen's Compensation Law, it is incontrovertible that the judgment in favor of the defendant is contrary to the federal law and federal constitution.

On all other points, the petitioner respectfully rests, without further comment, on the petition and brief heretofore filed.

Dated: New York, December 28, 1945.

Respectfully submitted,

COPAL MINTZ,
Attorney for Petitioner.